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2
3 BILL NO. G-74-05-25

4 GENERAL ORDINANCE NO. G- 11-74.

5 AN ORDINANCE prohibiting the Distribution or exhibition
6 of Obscene Matter or Performances and Repealing
7 General Ordinance No. G-07-74, dated April 9, 1974.

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

9 SECTION 1. Obscene Matters and Performances

10 For the purpose of this Ordinance:

11 (a) "Matter" means any book, magazine, newspaper, or printed or
written material, or any picture, drawing, photograph, motion picture, or other
pictorial representation, or any statue or other figure, or any recording, transcription,
or mechanical, chemical or electrical reproduction or any other articles, equipment,
machines or materials.

12 (b) "Performance" means any play, motion picture, dance or other
exhibition or presentation, whether pictured, animated or live, performed before
an audience of one or more persons.

13 (c) Any matter or performance is obscene if: (i) the average person,
applying contemporary community standards, finds that the matter or performance
taken as a whole, appeals to the prurient interest, and (ii) the matter or performance
depicts or describes in a patently offensive way, sexual conduct, normal or per-
verted, actual or simulated, and (iii) the matter or performance taken as a whole,
lacks serious literary, artistic, political or scientific value.

14 (d) "Sexual conduct" means acts of masturbation, excretory functions,
lewd exhibition of the genitals, sadomasochistic abuse, homosexuality, lesbianism,
bestiality, sexual intercourse or physical contact with a person's clothed or un-
clothed genitals, pubic area, buttocks, or the breast or breasts of a female for
the purpose of sexual stimulation, gratification, or perversion.

15 (e) "Sadomasochistic abuse" means flagellation or torture by or upon
a person as an act of sexual stimulation or gratification.

16 (f) "Person" means any individual, partnership, firm, association,
corporation or other legal entity.

17 (g) "Distribute" means to transfer possession of, whether with or with-
out consideration.

18 (h) "Knowingly" means knowing or having good reason to know or
having such constructive knowledge as would constitute knowing, the character of
the matter or performance.

19 (i) "Owner" means any person who owns or has legal right to posses-
sion of any matter.

20 (j) "City" means City of Fort Wayne, Indiana.

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SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into the City for sale or distribution, or in the City possesses, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents or exhibits any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That the act was done for legitimate scientific or educational purposes.

SECTION 5. Where the subject matter is offered for distribution to the public as stock in trade of a lawful business or activity, or as in the case of films is exhibited at a commercial theater showing regularly scheduled performances to the general public, no persons shall be arrested for a violation of any of the provisions of this Ordinance unless the arresting officer shall have first obtained an arrest warrant, and no property shall be seized as evidence unless a search warrant shall have first been obtained pursuant to the provisions of this Ordinance; Provided however, that the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of obtaining evidence.

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized or purchased, may apply for and obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity shall be held promptly and without the intervention of a jury, said restriction applying only to the preliminary determination and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the court shall direct the clerk of the court to issue notice to the defendant informing the person of the availability of a prompt adversary hearing prior to the issuance of a warrant of arrest. If the court determines at said hearing that the material is obscene, the matter shall be held as evidence and a warrant of arrest may be issued for the arrest of the defendant. Provided, further, if the defendant, owner or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after notice is issued by the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films or motion pictures, at any time after seizure and prior to trial or any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that other copies of the film or motion picture are not available to be exhibited, the court shall order that the applicant be permitted to copy the film or picture, at his own expense, so that showing can be continued pending a judicial determination of obscenity in an adversary hearing.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor, and shall upon conviction, be fined in any amount not to exceed One Thousand Dollars (\$1,000.00) and, may be imprisoned for any period not to exceed six (6) months.

SECTION 8. This Ordinance repeals General Ordinance No. G-07-74, dated April 9, 1974.

5 SECTION 9. If any provision or clause of this Ordinance, or its appli-
6 cation to any person or circumstance is held invalid, the invalidity shall not affect
7 other provisions or applications of this Ordinance, and to this end the provisions
8 of each section are declared to be severable.

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10 SECTION 10. This Ordinance shall be in full force and effect from and
11 after its passage, approval by the Mayor and legal publication thereof.
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John H. Logan
Councilman

Approved as to form and legality
this 14 day of May, 1974.

John H. Logan
John H. Logan, Attorney for
Common Council

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____

CITY CLERK

Read the third time in full and on motion by _____, seconded by V. Schmidt, and duly adopted, placed on its passage. Passed (~~POST~~) by the following vote:

AYES	<u>9</u>	NAYS	ABSTAINED	ABSENT	to-wit:
BURNS	<u>✓</u>	_____	_____	_____	_____
HINGA	<u>✓</u>	_____	_____	_____	_____
KRAUS	<u>✓</u>	_____	_____	_____	_____
MOSES	<u>✓</u>	_____	_____	_____	_____
NUCKOLS	<u>✓</u>	_____	_____	_____	_____
SCHMIDT, D.	<u>✓</u>	_____	_____	_____	_____
SCHMIDT, V.	<u>✓</u>	_____	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____	_____

DATE: 5-14-74

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. 2-11-74 on the 14 day of May, 1974.

Charles W. Staterman ATTEST: (SEAL)
Melvin G. Donck Dep. Clerk
CITY CLERK

Samuel J. Talarico
PRESTIDGING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th day of May, 1974, at the hour of 10:00 o'clock A. M., E.S.T.

Charles W. Staterman
Melvin G. Donck Dep. Clerk
CITY CLERK

Approved and signed by me this 15th day of May, 1974, at the hour of 11:30 o'clock A M., E.S.T.

John H. French
MAYOR

SUSPENSION OF RULES

BILL NO. b-74-05-25

Councilman Nuckols, moved to suspend the rules
on passage of BILL NO. b-74-05-25, at this meeting of
May 14, 1974, of the Common Council of the City
of Fort Wayne, Indiana. Said motion was seconded by Councilman
V. Schmidt, and duly passed by unanimous
vote of all legally elected members of the said Common Council.

The above BILL and General ORDINANCE was accordingly
placed on its passage.

DATE: 5-14-74

Samuel J Talarico Charles W. Whetstone

PRESIDING OFFICER

CITY CLERK

Charles G. Hinckley
Dep. Clerk

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
<u>BURNS</u>	/	—	—	—	—
<u>HINGA</u>	/	—	—	—	—
<u>KRAUS</u>	/	—	—	—	—
<u>Moses</u>	—	—	—	—	—
<u>Nuckles</u>	/	—	—	—	—
<u>Moses</u>	/	—	—	—	—
<u>D. SCHMIDT</u>	/	—	—	—	—
<u>V. SCHMIDT</u>	/	—	—	—	—
<u>STIER</u>	/	—	—	—	—
<u>TALARICO</u>	/	—	—	—	—

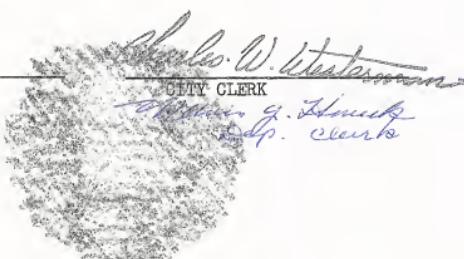
Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as General Ordinance No- b-11-74.

ATTEST: (SEAL)

DATE: 5-14-74

CITY CLERK

Charles G. Hinckley
Dep. Clerk





CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN
CITY CLERK

May 16, 1974

Miss Helen Libbing
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of May 18 and May 25, 1974, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council
of Fort Wayne, Indiana:
General Ordinance No. G-10-74
Zoning Ordinance No. Z-08-74
General Ordinance No. G-11-74

Please send us six (6) copies of the Publisher's Affidavit.

Thank you.

Sincerely,

Charles W. Westerman
City Clerk

CWW/ne
ENCL: 3

Number of insertions.....

Size of quad upon which type is cast 5¹/₂

Pursuant to the provision and penalties of Ch. 89, Acts 1967,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

May 28,74

Notice is hereby given that on the 14th day of May, 1974, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. C-74-42-25, G-1 City General Ordinance, to-wit:

BILL NO. G-74-42-25

UNNUMBERED ORDINANCE NO. G-11-74

AN ORDINANCE prohibiting the Distribution or exhibition of Obscene Matter or Performance and Related Activities. Ordinance No. C-74-42-25, dated April 9, 1974.

BE IT ORDAINED BY THE COMMON

COUNCIL OF THE CITY OF FORT

WAYNE, INDIANA:

SECTION 1. Obscene Matters and Performances For the purpose of this Ordinance:

(a) "Matter" means any book, magazine, newspaper, printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, any statue, figure, statue, figure, or recording, transcription, or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

(b) "Performance" means any play, motion picture, dance or other exhibition or presentation of matter, either in person or live, performed before an audience of one or more persons.

(c) "Matter or performance is obscene if: (i) the average person, applying contemporary community standards, finds that the matter, taken as a whole, appeals to the prurient interest; and (ii) the matter or performance depicts or describes, in a patently offensive way, acts conduct, normal or perverted, actual or simulated; and (iii) the matter or performance lacks serious literary, artistic, political or scientific value.

(d) "Sexual conduct" means acts of masturbation, fellatio, cunnilingus, fellatio, stimulation of the genitals, sadomasochistic abuse, homosexuality, bestiality, sexual or sadomasochistic acts involving a person's clothed or unclothed genitals, public area, buttocks, or the breast or breasts of a woman, or acts of oral or anal stimulation, gratification, or perversion.

(e) "Sadomasochistic abuse" means flagellation, torture by or of another, or any act of sexual stimulation or gratification.

(f) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(g) "Seize" means to transfer possession of, whether with or without consideration.

(h) "Knowingly" means knowing or having good reason to know or having such constructive knowledge as would constitute knowledge of the character of the matter or performance.

(i) "Owner" means any person who owns or has legal right to possession of any matter.

(j) "CITY" means City of Fort Wayne.

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought into the City, for sale or distribution, or in the City possesses, prepares, publishes or prints, with intent to distribute, distribute, or exhibit, or offers to distribute, distributes, or exhibits to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Every person who knowingly engages or participates in, manages, produces, directs, or presents any obscene performance is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That the matter seized is for legitimate scientific or educational purposes.

SECTION 5. Where the subject matter is offered for sale or distribution, or is held on stock in trade of a lawful business or activity, or as in the case of films is exhibited at a commercial or professional facility, or publicly scheduled performances to the general public, no persons shall be arrested for a violation of this Ordinance unless there is a reasonable chance unless the arresting officer shall have first obtained an arrest warrant, and any arrests made without a warrant, unless less a search warrant, shall have first been obtained pursuant to the provisions of this Ordinance. If the quantity of matter seized, the quantity of matter seized shall encompass no more than is reasonable and necessary for the prosecution.

SECTION 6. At any time after seizure, or

the obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized, may file a complaint with the court to obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. The court shall make a preliminary determination of obscenity shall be held promptly and without the intervention of the attorney for the defendant, only to the preliminary determination and in no way affecting the defendant's right to trial. If the defendant, owner, or other party in interest of any matter seized, fails to appear for the hearing for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after the filing of the complaint with the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films, if the defendant, owner, or other party in interest of any matter seized, fails to appear for trial or for any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that evidence seized is not reasonably available or are not available to be exhibited, the court shall order that the applicant be permitted to exhibit the evidence in question at his expense, so that showing can be continued pending a judicial determination of obscenity.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be

Arvilla De Wald

CLERK

Title.....

PUBLISHER'S AFFIDAVIT

State of Indiana } ss:
ALLEN County }

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DE WALD who, being duly sworn, says that she is CLERK

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for time, the dates of publication being as follows:

May 18, 1974May 25, 1974

Subscribed and sworn to before me this day of

March 11, 1974 Notary Public

My commission expires

The obtaining of evidence by purchase, and prior to arrest, the City, defendant, owner, or other party in interest of any matter seized, may file a complaint with the court to obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. The court shall make a preliminary determination of obscenity shall be held promptly and without the intervention of the attorney for the defendant, only to the preliminary determination and in no way affecting the defendant's right to trial. If the defendant, owner, or other party in interest of any matter seized, fails to appear for the hearing for a prompt adversary hearing within five (5) days after the seizure occurs or within seven (7) days after the filing of the complaint with the court, an arrest warrant may be issued for the arrest of the defendant. In the case of films, if the defendant, owner, or other party in interest of any matter seized, fails to appear for trial or for any adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that evidence seized is not reasonably available or are not available to be exhibited, the court shall order that the applicant be permitted to exhibit the evidence in question at his expense, so that showing can be continued pending a judicial determination of obscenity.

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be

eliction or torture by or upon a person who is an
act of sexual stimulation.

(g) "Person" means any individual, part-
nership, firm, association, corporation or
other legal entity.

(h) "Permittee" means to transfer pos-
session of, whether with or without consid-
eration.

(i) "Knowing" means knowing or hav-
ing good reason to know or having such
constructive knowledge as will constitute the
knowledge of a reasonable man in the conduct or
performance.

(j) "Owner" means any person who owns
or has legal right to possession of any prop-
erty.

(l) "City" means City of Fort Wayne,
Indiana.

SECTION 2. Every person who knowingly
sends, causes to be sent, or brings or
causes to be brought, into the City for sale
of distribution, any obscene matter, or
represents, writes or prints, with Intent to
distribute or to exhibit to another, or who
has distributed or exhibited to another, or
intends to do so, any obscene matter is guilty of a
misdemeanor.

SECTION 3. Every person who knowingly
engages or participates in, produces, pro-
duces, sponsors, presents or exhibits any
obscene matter is guilty of a misdemeanor.

SECTION 4. Defenses. It shall be an af-
firmative defense to a prosecution under
this Ordinance for the defendant to show:

(a) That the evidence was obtained for legitimate

scientific or educational purposes.

SECTION 5. Where the subject matter is
offered for sale or purchase, or seized, or
stock in trade of a lawful business or activi-
ty, or as in the case of a theater, is exhibited or
performed before the general public
in a place open to the public, or the applica-
tion of any of the provisions of this Ordin-
ance, unless the arresting officer, shall
have probable cause to believe that said
no property shall be seized as evidence un-
less a search warrant shall have first been
obtained and issued to do so pursuant to this
Ordinance; Provided, however, that the
quantity of evidence seized may be less than
the more than is reasonable and necessary
for the purpose of obtaining evidence.

SECTION 6. Search Warrant. In the course or

the obtaining of evidence by purchase, end
prior to arrest, the City, defendant, owner,
or other party in interest of any matter
seized or purchased, may apply to the court to ob-
tain a prompt adversary hearing for the
purpose of obtaining a preliminary deter-
mination of obscenity. A prompt adver-
sary determination of obscenity shall
be held promptly and without the intervention
of a jury trial. If evidence has been seized
by purchase, the court shall direct the
clerk to issue a search warrant to the de-
fendant informing the person of the evi-
dence of a prompt adversary hearing prior
to the issuance of the search warrant. If
the court determines at said hearing that
the subject is obscene, and a warrant is issued
held as evidence, and a warrant of arrest
may be issued for the arrest of the defend-
ant or owner or other party in interest, or
owner or other party in interest of any mat-
ter seized or purchased shall not apply for
a prompt adversary hearing. Within 12 (twelve)
days after the seizure occurs or within sev-
en (7) days after the issuance of the search
warrant, a search warrant may be issued for
the arrest of the defendant. In the case of
time, the defendant may be arrested after
seizure and prior to trial or any adversary
hearing for the purpose of obtaining a pre-
liminary determination of obscenity. The
defendant or owner of any matter seized
may apply for and, upon a showing that
other methods of obtaining a preliminary
determination of obscenity are not available to be exhibited, the court
shall order that the defendant be permitted
to copy the same or submit it at own ex-
pense, that showing can be continued
pending the final determination of obscen-
ity in an adversary hearing.

SECTION 7. Any person who violates any
of the provisions of this ordinance shall be
guilty of a misdemeanor, and shall upon
conviction be fined in any amount not to
exceed One Thousand Dollars (\$1,000.00)
and, may be imprisoned for any period not
to exceed one month.

SECTION 8. This Ordinance repeals General
Ordinance No. G-0774, dated April 9,
1974.

SECTION 9. If any provision or clause of
this Ordinance or its companion or any
person or circumstance should be held invalid, the
invalidity shall not affect other provisions
of this Ordinance or its companion, and the
parties to this end the provisions of each section are
declared to be severable.

SECTION 10. This Ordinance shall be in
full force and effect from and after its pos-
tage, approved by the Mayor and legal pub-
lication.

JOHN NUCKOLS, Councilman.
Reed the first time in open session
by Nuckles, seconded by V. Schmidt, and
duly adopted, placed on its passage.
PASSED in the following vote:

Ayes: Nine.

Burns, Hines, Kraus, Moses, Nuckles, D.

Schmidt, Tolarico, Stier, Tolacico.

Nays: None.

Date: 5-2-74. (SEAL)

CHARLES W. WESTERMAN, City Clerk.

MELVIN G. HONECK, Deputy Clerk.

Samuel J. Tolarico, Presiding Officer.

Presented by me to the Mayor of the City

of Fort Wayne Indiana, this day of

May, 1974, at the hour of 10:00 o'clock

A.M., E.S.T.

CHARLES W. WESTERMAN, City Clerk

MELVIN G. HONECK, Deputy Clerk

Approved and signed by me this day of

May, 1974, at the hour of 11:30 o'clock

A.M., E.S.T.

IVAN A. LEBAMOFF, Mayor

City of Fort Wayne, Indiana, do hereby certi-

fy that the above and foregoing is a full,

true and complete copy of General Ordin-

ance No. G-0774, passed by the Common

Council on the 14th day of May, 1974, and

approved and signed by me this day of

May, 1974 and now remains as filed and un-

recorded in my office.

WITNESS, I, Charles W. Westerman, the official seal

of the City of Fort Wayne, Indiana, this

15th day of May, 1974.

CHARLES W. WESTERMAN,

City Clerk.

MELVIN G. HONECK,

Deputy Clerk.

Pursuant to the provision and penalties of Ch. 89, Acts 1967.

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

V. E. Gerkens

Date May 28, 1974

Title Clerk

Notice is hereby given that on the 14th day of May, 1974, the Common Council of the City of Fort Wayne, Indiana, Regular Session did pass the following Bill No. C-74-05-25, G-11- General Ordinance, to-wit:

BILL NO. G-74-05-25

GENERAL ORDINANCE NO. G-11-74
AN ORDINANCE prohibiting the distribution or exhibition of Obscene Matter or Performances and repealing General Ordinance No. G-9-74, dated April 9, 1974.

BILL NO. G-74-05-25, G-11- General Ordinance, to-wit:

SECTION 1. Obscene Matters and Performances For the purpose of this Ordinance:

(a) "Matter" means any book, magazine, newspaper or printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, or any article or object, film, tape, or recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machine or material;

(b) "Performance" means any play, motion picture, dance or other exhibition or presentation of matter, or acts simulated or live, performed before an audience of one or more persons;

(c) Any matter or performance is obscene if the average person, applying contemporary community standards, finds that the matter or performance (i) is wholly or partially offensive to the average person; (ii) tends to deprave or corrupt the average person; (iii) depicts a person in clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, or in a manner calculated to stimulate or gratify sexual perversions;

(d) "Sexual conduct" means acts of masturbation, oral cunnilingus, fellatio, cunnilingus, fellatio, or sodomitous abuse, or any other act or conduct involving sexual stimulation or sexual stimulation or gratification;

(e) "Sodomitous abuse" means flagellation, flogging, or any other act or conduct as an act of sexual stimulation or gratification;

(f) "Person" means any individual, partnership, firm, association, corporation or other legal entity;

(g) "Distribute" means to transfer possession of, whether with or without consideration;

(h) "Knowingly" means knowing or having reason to know or having such constructive knowledge as would constitute knowing the character of the matter or performance;

(i) "Owner" means any person who owns or has legal right to possession of any matter;

(j) "CITY" means City of Fort Wayne, Indiana;

SECTION 2. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into the City for sale or distribution, or who purchases, receives, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to sell or to exhibit to another, or sells to another any obscene matter is guilty of a misdemeanor;

SECTION 3. Every person who knowingly engages or participates in, manages, produces, sponsors, presents, or exhibits any obscene matter is guilty of a misdemeanor;

SECTION 4. Defendants. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That he was under the legitimate scientific or educational purposes;

SECTION 5. Where the subject matter is offered for sale or exhibited for exhibition as stock in trade of a lawful business or activity, or in the case of films is exhibited at a place of business, then, prior to any scheduled performances to the general public, no persons shall be arrested for a violation of any of the provisions of this Ordinance until the arresting officer shall have first obtained an arrest warrant, and no search warrant shall be issued or even less a search warrant shall be first been obtained pursuant to the provisions of this Ordinance, except that in the event the quantity of matter seized shall encompass no more than is reasonable and necessary for the purpose of investigation;

SECTION 6. At any time after seizure, or the obtaining of evidence by purchase, any person or persons in the City, or any owner, or other party in interest of any matter seized or purchased, may apply for and obtain a hearing before the court for the purpose of obtaining a preliminary determination of obscenity. Said hearing for preliminary determination of obscenity shall be held promptly and without the intervention of a jury, said restriction applying only to the purpose of determining obscenity and in no way affecting the defendant's right to a jury trial. If evidence has been obtained by purchase, the defendant may apply to the clerk of the court to issue notice to the defendant informing the person of the availability of the evidence for inspection prior to the issuance of a warrant of arrest. If the court determines of said hearing that the seized or purchased matter is to be held as evidence and a warrant of arrest may be issued for the arrest of the defendant, or his sureties, or his sureties and the owner or other party in interest of any matter seized or purchased shall apply for a preliminary hearing within fifteen (15) days after the seizure occurs or within seven (7) days after notice is given by the court that a warrant may be issued for the arrest of the defendant. In the case of films or motion pictures of any kind, after seizure and prior to the preliminary adversary hearing for the purpose of obtaining a preliminary determination of obscenity, the defendant or owner of any matter seized may apply for and, upon a showing that one-half of the film or motion pictures are not obscene, if not exhibited, the court shall order that the applicant be permitted to copy it from him or herself, at own expense, so that a showing may be made pending a judicial determination of obscenity in the adversary hearing;

SECTION 7. Any person who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, be fined in any amount not to exceed One Thousand Dollars (\$1,000.00)

PUBLISHER'S AFFIDAVIT

State of Indiana

ALLEN County

Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerkens, who, being duly sworn, says that, S. he is, Clerk

NEWS-SENTINEL

DAILY

newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time... S

as follows:

MAY 18, 1974
May 25, 1974

Subscribed and sworn to before me this 26th day of

May 19, 1974

Edith Stapleton

Notary Public

My commission expires

March 11, 1978

(i) "Person" means any individual, partnership, firm, association, corporation or entity.

(g) "Distribute" means to transfer possession of, whether with or without consideration.

(h) "Knowingly" means knowing or having good reason to know or believe such conduct or property would constitute knowing the character of the matter or performance.

(i) "Owner" means any person who owns or has legal right to possession of any matter.

(j) "City" means City of Fort Wayne, Indiana.

SECTION 2. Every person who knowingly sells or causes to be sent, or brings or causes to be brought, into the City for sale of rental, or who manufactures, republishes, prepares, publishes or prints, with intent to distribute or to exhibit to another, or who offers to sell or exhibits to another, or lends to another any obscene matter is guilty of a misdemeanor.

SECTION 3. Defense. It shall be an affirmative defense to a prosecution under this Ordinance for the defendant to show:

(a) That the obscene material was for legitimate scientific or educational purposes.

SECTION 4. Where the subject matter is seized, or where it is exhibited, or sold, or stock in trade of a lawful business or activity, or as in the case of films is exhibited at a place of public assembly, or during scheduled performances to the general public, no persons shall be arrested for a violation of this Ordinance except for a violation of noise unless the arresting officer shall have first obtained an arrest warrant, and no arrests shall be made except when, unless a search warrant shall have first been obtained pursuant to the provisions of this Ordinance. Provided, however, that the quantity of matter seized shall encompass reasonable amounts necessary and necessary to the purpose of obtaining evidence.

SECTION 5. At any time after seizure, or where the subject matter is seized, or sold prior to arrest, the City, defendant, owner, or other party in interest of any matter seized, or purchased, shall be entitled to obtain a prompt adversary hearing for the purpose of obtaining a preliminary determination of obscenity. Such a preliminary determination of obscenity shall be held promptly and shall be the only venue for such restriction applying only to the preliminary determination and in no way restricting the defendant's right to a trial if he or she has been indicted by purchase, the court shall direct the court of law to issue a writ of habeas corpus against the defendant informing the person of the availability of a prompt adversary hearing prior to trial. If the court determines that the material is obscene, the matter shall be held in custody pending trial. A search warrant may be issued for the arrest of the defendant. Provided, further, if the defendant, owner, or other party in interest of any matter seized or purchased shall not apply for a prompt adversary hearing within five (5) days of the date of seizure or within seven (7) days after notice is issued by the court, or if the warrant is issued prior to the trial date, the court may release the defendant. In the case of films or motion pictures, at any time after seizure, or purchase, the defendant may apply for a hearing for the purpose of obtaining a preliminary determination of obscenity. The defendant, owner, or other party in interest may apply for, and upon a showing that other copies of the film or motion picture are available, the court of law shall grant such order that the applicant be permitted to copy the film or picture, at his own expense, for the purpose of the hearing pending a judicial determination of obscenity in an adversary hearing.

SECTION 6. Any person who violates any of the provisions of this Ordinance shall be guilty of a Class C Misdemeanor. Upon conviction, be fined in any amount not to exceed One Thousand Dollars (\$1,000.00) or may be imprisoned for any period not to exceed (6) months.

SECTION 8. This Ordinance repeals General Ordinance No. G-3-7-2, effective May 9, 1974.

SECTION 9. If any provision or clause of this ordinance, or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or sections of this Ordinance. To this end the provisions of each section are declared to be severable.

SECTION 10. This Ordinance shall be in full force and effect from and after its passage, approved by the Mayor and legal publication.

JOHN NUCKOLS, Councillor,
Read the ordinance in open session before
by Nuckles, seconded by V. Schmidt, and
duly adopted, placed on its passage,

Passed by the following vote:

Ayes: Burns, Hingo, Kraus, Moses, Nuckles, D.
Noes: None
Date: 5-14-74

CHARLES W. WESTERMAN, City Clerk,
MELVIN G. HONECK, Deputy Clerk,
Passed and adopted by the Common
Council of the City of Fort Wayne, Indiana,
as General Ordinance No. G-1-7-4 on the
14th day of May, 1974.

WITNESS my hand, (SEAL)

Charles W. Westerman — City Clerk
Melvin G. Honeck — Deputy Clerk
Common, Tolarico, Presiding Officer.

Presented by me to the Mayor of the City
of Fort Wayne, Indiana, on the 15th day of
May, 1974, at the hour of 10:00 o'clock

A.M., E.S.T.

CHARLES W. WESTERMAN, City Clerk
MELVIN G. HONECK, Deputy Clerk
Approved and signed by me this 15th day
of May, 1974, at the hour of 10:00 o'clock

A.M., E.S.T.

IVAN LEBAMOEST, Mayor
I, Charles W. Westerman, Clerk of the
City of Fort Wayne, Indiana, do hereby cer-
tify that the above and foregoing is a true
and correct copy of General Ordin-
ance No. G-1-7-4 passed by the Common
Council of the City of Fort Wayne, Indiana,
on the 14th day of May, 1974, and that
said Ordinance was duly signed and
approved by the Mayor on the 15th day of
May, 1974, and remains on file end on
record in my office.

WITNESS my hand, and the official seal
of the City of Fort Wayne, Indiana, this
15th day of May, 1974.

CHARLES W. WESTERMAN,
City Clerk,
MELVIN G. HONECK,
Deputy Clerk.

